SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 12

STATE OF MINNESOTA,

Respondent,

vs.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY,

Appellant.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 606

STATE OF MINNESOTA,

Respondent,

vs.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY,

Appellant.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Respondent in the above entitled cause moves the Court, pursuant to Rule 16, paragraph 1,(b) and (c), of the Revised Rules of this Court, to dismiss this appeal or to affirm the judgment below for the following reasons: There is no substantial Federal question presented as a basis of

jurisdiction in this Court because the questions presented have been foreclosed by previous decisions of this Court.

Wherefore, the respondent moves the Court to dismiss the appeal in this cause for want of a substantial Federal question or in the alternative to affirm the judgment of the Supreme Court of Minnesota from which this appeal was taken for the reason that the questions presented are foreclosed by prior decisions of this Court.

ARGUMENT IN SUPPORT OF MOTION, STATEMENT OF THE CASE INCLUDING THE FACTS

This case involves the Minnesota corporate income tax act (Laws of Minnesota 1933, Chapter 405, Section 3, coded as Minnesota Statutes, Section 290.03) which imposes a tax upon the net income of corporations derived from sources within the State of Minnesota. The provisions of Section 290.03 are set forth in Appendix A.

In that part of its jurisdictional statement entitled, "Statement of Facts", (pages 4-7) the appellant sets forth some of the facts concerning the case. The appellant's statement, however, is interspersed with its own characterizations, interpretations, and conclusions which are not supported by the record in an effort to minimize appellant's activities in Minnesota and to supply a substantial basis essential to sustain jurisdiction.

A complete statement of the facts is set forth in the trial court's findings of fact (Statement, pp. 95-103; 113-115)[1]

[1]Inasmuch as the Trial Court's findings and the Minnesota Supreme Court opinion (reported as —— Minn. ——, 84 N.W. 2d 373 (1957)) are contained in the appellant's Jurisdictional Statement, all references will be made to the Jurisdictional Statement.

and the Minnesota Supreme Court opinion (Statement, pp. 34-35).

Some of the important facts showing the appellant's activities in Minnesota might be summarized as follows:

For the convenience of its salesmen and customers, the appellant rented and maintained in Minnesota an office which was used to some extent as a central office and served as a clearing house for orders and complaints (Minn. Supreme Crt. opinion; Statement, p. 34). The office was available to out-state salesmen while in Minneapolis and was a place where they could telephone and work (Amended Finding of Fact IX of Trial Crt.; Statement, p. 114). A full-time secretary was employed in this office (Minn. Supreme Crt. opinion; Statement, p. 34). Two telephone lines were maintained and were listed in both telephone (alphabetical and classified indexes) and city directories (Minn. Supreme Crt. opinion; Statement, p. 34). One of the district representatives was in charge of this office and, with the appellant's knowledge, held himself out as district manager (Amended Finding of Fact VIII of Trial Crt.; Statement, p. 113). He was listed in the telephone book and city directory as district manager and applications for automobile licenses were signed as district manager (Amended Finding of Fact VIII of Trial Crt.; Statement, pp. 113-114). On occasion appellant's employees purchased automobiles in Minnesota two of which were signed for by this district manager (Amended Finding of Fact VIII of Trial Crt.; Statement, p. 114). Appellant owned personal property in this state consisting of automobiles driven by salesmen, furniture and fixtures, supplies, goodwill advertising, and other material located in its Minneapolis office (Finding of Fact V of Trial Crt.; Statement, pp. 97-98).

During the years at issue the appellant had at most six employees in the State of Minnesota (Finding of Fact VI of Trial Crt.; Statement, p. 98). Two salesmen and a secretary were the employees of the appellant operating out of its Minneapolis office (Finding of Fact VI of Trial Crt.; Statement, p. 98). The other employees operated directly out of their homes (Finding of Fact VI of Trial Crt.; Statement, p. 98). All were residents of Minnesota (Finding of Fact VI of Trial Crt.; Statement, p. 98). Most of the supplies used in Minnesota by the appellant were obtained from the Mason City office (Finding of Fact VII of Trial Crt.; Statement, p. 98). However, the appellant's employees in the Minneapolis office did have authority to purchase supplies such as stamps, etc. (Finding of Fact VII of Trial Crt.; Statement, p. 98).

The price of appellant's cement products was the delivered price to the customer, the sum of the base price plus the freight plus the package. Accordingly, the products were invoiced f.o.b. destination. Freight was prepaid by the appellant, and in no case could the customer purchase cement from appellant except at a delivered price nor, since appellant had no facilities for loading trucks, could the customer pick up cement at appellant's plant. Quotations giving both base and delivered price were sent directly to the customer from the Mason City office. Although the salesmen had no authority to give the customer a quotation, they did carry a rate book from which they regularly computed the delivered price to the customer (Minn. Supreme Crt. opinion; Statement, p. 35).

Claims for loss or damage were generally handled through the home office. But it was not uncommon for customers to present their claims to the salesman who wrote the company

informing it of the trouble and requested the company what they wished to do about it. (Amended Finding of Fact X of Trial Crt.; Statement, p. 115).

The appellant was engaged in selling and delivering cement to Minnesota customers for at least thirty years prior to the commencement of the action here involved (Finding of Fact XI of Trial Crt.; Statement, pp. 100-101). Forty-eight per cent of appellant's entire sales were made to customers within the State of Minnesota (Finding of Fact XI of Trial Crt.; Statement, p. 101). By reason of the appellant's location, it enjoyed a definite competitive advantage over Minnesota cement companies because of the favorable freight rates to the appellant by reason of the fact that it was in closer proximity to southern Minnesota customers than such customers were to Minnesota cement producers (Finding of Fact XII of Trial Crt.; Statement, p. 101).

The appellant would sell only to eligible dealers which are lumber and building supply dealers, contractors and ready-mix contractors (Amended Finding of Fact IX of Trial Crt.; Statement, p. 102). The salesmen regularly and systematically solicited orders from these eligible purchasers (Minn. Supreme Crt. opinion; Statement, p. 34). In addition the salesmen regularly and systematically contacted potential customers and users of cement products (including architects and building and road contractors) to induce them to buy from appellant's established local outlets and dealers, promoted goodwill and furnished advertising materials to customers, entertained customers and occasionally received and forwarded complaints (Minn. Supreme Crt. opinion; Statement, p. 34).

The appellant's predecessor corporation has resorted to the courts of the State of Minnesota to enforce its contracts

on at least one occasion (Finding of Fact XVI of Trial Crt.; Statement, p. 103).

Appellant's assignment of error in effect raises the two questions of (1) whether there has been a violation of the commerce clause of the Federal Constitution and (2) whether there has been a violation of the due process clause of the Federal Constitution. The questions presented by appellant, we believe, have been foreclosed by prior decisions of this Court and, therefore, are not substantial.

Appellant's contentions concerning alleged violations of the commerce clause have been foreclosed by prior decisions of this Court.

The Minnesota law here at issue, Minnesota Statutes, Section 290.03, imposes a tax upon the taxable net income of all domestic and foreign corporations, except those taxable under Minnesota Statutes, Section 290.02, which own property within Minnesota, or whose business consists exclusively of foreign commerce, interstate commerce, or both.

The Minnesota Supreme Court has held that this tax is a net income tax, limited and apportioned to the income earned from and within the state, which neither burdens nor discriminates against interstate commerce (Statement, p. 39); it is not, by dictionary definition, legislative intent, or by operative effect, an excise, franchise, or privilege tax (Statement, p. 39). It is non-discriminatory, applying equally to all taxpayers, resident or non-resident, whether engaged in interstate or intrastate commerce, and is confined to that portion of a taxpayer's income earned from business activities which are fairly apportioned to, and localized within, the State of Minnesota (Statement, p. 41).

The interpretation of this statute by the Minnesota Supreme Court is a part of the statute for purposes of determining whether taxing statutes, as applied, violate the commerce clause of the United States Constitution. *Wheeling Steel Corporation v. Glander,* 337 U.S. 562, 570, 69 S. Ct. 1291, 1296 (1949).

This Court has consistently held that interstate commerce must pay its own way. *Postal Telegraph Cable Co. v. City of Richmond,* 249 U.S. 252, 259, 39 S. Ct. 265, 266 (1919); *Western Livestock v. Bureau of Internal Revenue,* 303 U.S. 250, 254, 58 S. Ct. 546, 548 (1938); *Michigan-Wisconsin Pipe Line Co. v. Calvert,* 347 U.S. 157, 165, 74 S. Ct. 396, 400 (1954).

It is also a well-established and long-standing principle of law that a tax does not discriminate against interstate commerce if other related taxes impose equal burdens on intrastate commerce (*Interstate Busses Corp. v. Blodgett,* 276 U.S. 245, 251, 48 S. Ct. 230, 231 (1928); *Gregg Dyeing Co. v. Query,* 286 U.S. 472, 479, 52 S. Ct. 631, 634 (1932); *Henneford v. Silas Mason Co.,* 300 U.S. 577, 582-584, 57 S. Ct. 524, 527 (1937); *Western Livestock v. Bureau of Internal Revenue,* 303 U.S. 250, 258, 58 S. Ct. 546, 549-550 (1938); *Southern Pacific Co. v. Gallagher,* 306 U.S. 167-172, 59 S. Ct. 389, 391 (1939); *Nippert v. City of Richmond,* 327 U.S. 416, 425-426, 66 S. Ct. 586, 590-591 (1946)).

The tax at issue does not discriminate against interstate commerce, since all corporations not taxable under Section 290.03 are subject to tax of equal rate under Section 290.02, the provisions of which are set forth in Appendix B.

In fact, if the appellant was not subject to tax in Minnesota, it would enjoy an advantageous competitive position with domestic corporations who are subject to a tax of equal rate.

The appellant in asserting the invalidity of the statute at issue places great emphasis on the following four cases: *Cheney Bros. Co. v. Commonwealth of Massachusetts*, 246 U.S. 147, 38 S. Ct. 295 (1918); *Alpha Portland Cement Co. v. Massachusetts*, 268 U.S. 203, 45 S. Ct. 477 (1925); *Spector Motor Service Co. v. O'Connor*, 340 U.S. 602, 71 S. Ct. 508 (1951); *Michigan-Wisconsin Pipe Line Co. v. Calvert*, supra. An analysis of these cases and the other cases in which taxing provisions have been held to violate the commerce clause will show that, in each case, the tax was either an excise tax on interstate commerce or a tax upon the franchise or occupation or privilege of engaging in interstate commerce. In the Cheney Bros. Co.[2] and Alpha Portland Cement Co. cases the Massachusetts tax was construed by the Massachusetts Supreme Court as an excise tax on interstate business; in the Spector case the Connecticut Supreme Court determined that the tax was upon the privilege of engaging in interstate commerce and in the Michigan-Wisconsin Pipe Line Co. case the Michigan Supreme Court held that the tax was upon the occupation of transmission in interstate commerce.

In the Spector case, supra (pages 608-609), in holding invalid a franchise tax of a foreign corporation engaged exclusively in interstate commerce, this Court stated:

> "Even though the financial burden on interstate commerce might be the same, the question whether a state may validly make interstate commerce pay its way depends first of all upon the constitutional channel through which it attempts to do so. Freeman v. Hewit, 329 U.S. 249, 67 S. Ct. 274, 91 L. Ed. 265; McLeod v.

[2] It should be noted that *Cheney Bros. Co. v. Mass.*, 246 U.S. 147, 38 S. Ct. 295 (1918), involves an excise tax imposed on seven corporations differently situated. The tax was held to be valid as applied to the Northwestern Consolidated Milling Co., which had comparable localized activities as did the appellant.

J. E. Dilworth Co., 322 U.S. 327, 64 S. Ct. 1023, 88 L. E. 1304.

" * * * * * * * * *

"The incidence of the tax provides the answer. The courts of Connecticut have held that the tax before us attaches solely to the franchise of petitioner to do interstate business. The State is not precluded from imposing taxes upon other activities or aspects of this business which, unlike the privilege of doing interstate business, are subject to the sovereign power of the State. Those taxes may be imposed although their payment may come out of the funds derived from petitioner's interstate business, provided the taxes are so imposed that their burden will be reasonably related to the powers of the State and nondiscriminatory."

In addition to the above cases, this Court has, on a number of other occasions, drawn a well-defined distinction between an excise or privilege tax imposed on the exercise of a constitutional privilege as distinguished from a tax on property used in, or income received from, such activities. There has always been a clear recognition that in addition to excise or privilege taxes there are the categories of taxes on property and taxes on income.

This Court on a number of occasions has observed that one type of tax would be unconstitutional and another would not in a particular factual situation.[3] Thus in the case of

[3]Compare *Anglo Chilean Nitrate Sales Corp. v. Alabama*, 288 U.S. 218, 53 S. Ct. 373 (1933), with *Peck & Co. v. Lowe*, 247 U.S. 165, 38 S. Ct. 432 (1918); *New Jersey Realty Title Ins. Co. v. Div. of Tax Appeals*, 338 U.S. 665, 70 S. Ct. 413 (1950), with *Werner Machine Co. v. Director of Div. of Taxation*, 350 U.S. 492, 76 S. Ct. 534 (1956); *McLeod v. J. E. Dilworth Co.*, 322 U.S. 327, 64 S. Ct. 1023 (1944), with *General Trading Co. v. State Tax Commission*, 322 U.S. 335, 64 S. Ct. 1028 (1944).

Murdock v. Pennsylvania, 319 U.S. 105, 113, 63 S. Ct. 870, 875 (1943), the court declared:

> "* * * * * A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Co., 309 U.S. 33, 56-58, 60 S. Ct. 388, 397, 398, 84 L. Ed. 565, 128 A.L.R. 876), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. Id. 309, U.S. at page 47, 60 S. Ct. at page 392, 84 L. Ed. 565, 128 A.L.R. 876 and cases cited."

The Minnesota net income tax at issue in this proceeding is not an excise on commerce, nor is it imposed on the privilege or franchise of engaging in interstate commerce. It is levied after the interstate commerce transactions within the state have been completed, and after all expenses are paid and losses adjusted. Thus the tax is exacted only after the stream of income producing interstate commerce has ceased to flow (Minn. Supreme Crt. opinion; Statement, p. 44).

The fact that a net income tax does not impede commerce is recognized by this Court in *Henneford v. Silas Mason*, 300 U.S. 577, 586, 57 S. Ct. 524, 528 (1937), where the court stated:

> "But a tax upon use, or, what is equivalent for present purposes, a tax upon property after importation is over, is not a clog upon the process of importation at all, any more than a tax upon the income or profits of a business."

This court has on several previous occasions considered and sustained a tax on net income from interstate commerce of the same type of tax which is at issue in this proceeding. *U. S. Glue Co. v. Town of Oak Creek*, 247 U.S. 321, 38 S. Ct.

499 (1918); *Shaffer v. Carter*, 252 U.S. 37, 40 S. Ct. 221 (1920).

In *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 47, 60 S. Ct. 388, 392 (1940), this court in discussing a tax on net income of a foreign corporation derived exclusively from interstate commerce stated:

> "* * * A tax may be levied on net income wholly derived from interstate commerce. Non-discriminatory taxation of the instrumentalities of interstate commerce is not prohibited."

Several years later, in *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 656, 62 S. Ct. 857, 862 (1942), this court reaffirmed the principle that a state may impose a tax on net income wholly derived from interstate commerce.

Subsequently the power of a state to impose a tax on net income derived exclusively from interstate commerce was regarded as so well settled that, in 1945 in the case of *Memphis Natural Gas Co. v. State Tax Commission*, 323 U.S. 682, 65 S. Ct. 440, this court dismissed the appeal for want of a substantial Federal question, and again in 1946, this court unanimously affirmed, in a per curiam decision, the holding of the California Supreme Court that their net income tax on income derived exclusively from interstate commerce did not violate the commerce clause. (*West Publishing Co. v. McColgan*, 328 U.S. 823, 66 S. Ct. 1378).

Appellant's contentions concerning alleged violations of the due process clause have been foreclosed by prior decisions of this Court.

In considering whether a particular tax is to stand or fall under the due process clause, the question for determination is whether the tax as imposed taxes values beyond the jurisdiction of the state imposing the tax. As stated in *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 174, 69 S. Ct. 432, 434 (1949):

> "* * * So far as due process is concerned the only question is whether the tax in practical operation has relation to opportunities, benefits, or protection conferred or afforded by the taxing state. See Wisconsin v. J. C. Penney Co., 311 U.S. 435, 444, 61 S. Ct. 246, 249, 85 L. Ed. 267, 130 A.L.R. 1229. Those requirements are satisfied if the tax is fairly apportioned to the commerce carried on within the state."

Apportionment formulae similar to the three-factor apportionment formula used by the State of Minnesota have on many occasions been upheld against due process attacks. *International Harvester Co. v. Evatt*, 329 U.S. 416, 67 S. Ct. 444 (1947); *Butler Brothers v. McColgan*, 315 U.S. 501, 506-7, 62 S. Ct. 701 (1942); *Ford Motor Co. v. Beauchamp*, 308 U.S. 331, 60 S. Ct. 273 (1939).

The cases cited herein demonstrate that if the total income of a taxpayer is apportioned so as to reflect only that portion of the income properly assignable to the taxing state, then insofar as due process is concerned the tax thereon is not unconstitutional; for the very essence of the due process objection is that the tax as applied taxes income and values beyond the territorial jurisdiction of the state.

To sustain a tax under the due process clause there must, of course, be some minimal connections between the taxed commerce and the state.

The appellant's contention that there are insufficient connections with the state to be subject to its taxing power is foreclosed by the decision of this court in the case of *International Shoe Company v. State of Washington,* 326 U.S. 310, 66 S. Ct. 154 (1945), in which the court held that the appellant who was a non-domiciled foreign corporation engaged exclusively in interstate commerce and whose only connections with the State of Washington consisted of continuous and systematic course of solicitation plus the fact it had resorted to Washington's courts were sufficient to subject appellant to jurisdiction and to the tax.

In the findings of fact (Statement, pp. 95-103; 113-115) and the factual review (Statement, pp. 34-35), the income producing activities of the appellant in the State of Minnesota were outlined. The Supreme Court of Minnesota, in its opinion, has also outlined some of the benefits and protection which the appellant has received in relation to its activities in Minnesota. The factual connections between the appellant and the state were far greater in the instant case than in the International Shoe Company case. The holding in the International Shoe Company case that the activity of employing salesmen in a state is a sufficient due process foundation for the imposition of a tax forecloses the appellant's objections, based on due process, to the imposition of a tax on net income arising from that activity and other activities within the taxing state.

In 1946, in West Publishing Co. v. McColgan, supra, on facts substantially similar to the facts in the instant case, this court citing International Shoe Co., supra, as authority,

affirmed in a per curiam decision the decision of the California Supreme Court that the imposition of California's income tax on the net income of a corporation engaged exclusively in interstate commerce did not violate the due process clause.

Summary of Controlling Cases

In 1946 this court was confronted with both a commerce clause and due process attack upon California's net income tax imposed on a corporation engaged exclusively in interstate commerce. *West Publishing Co. v. McColgan,* supra.

The activities of West Publishing Company in California were substantially similar to the appellant's activities in Minnesota.

The California Supreme Court, speaking through Judge Traynor, 27 Cal. 2d 705, 166 P. 2d 861, noted the distinction between the line of cases (Alpha Portland Cement Co. v. Mass., supra; Cheney Bros. Co. v. Mass., supra, etc.) invalidating taxes upon the privilege of doing an exclusively interstate business, and those cases approving a tax on the net income derived from interstate commerce (McGoldrick v. Berwind-White, supra, Memphis Natural Gas Co. v. Stone, supra, etc.) held that California's tax on net income from a corporation engaged in interstate commerce did not violate the commerce clause. It also held that the imposition of this net income tax did not violate the due process clause. The power of a state to impose a net income tax on corporations similarly situated was, by this time, so well established, that this court on review unanimously affirmed the California Supreme Court in a per curiam decision, citing as authority the cases of U. S. Glue Co. v. Town of Oak Creek, supra,

Interstate Busses Corp. v. Blodgett, supra, Memphis Natural Gas Co. v. Beeler, supra, and International Shoe Co. v. Washington, supra.

We submit that these cases are dispositive of the issues presented in this proceeding.

CONCLUSION

Inasmuch as appellant's contentions concerning alleged violation of the commerce clause and due process clause have been foreclosed by prior decisions of this Court, we respectfully submit that this appeal should be dismissed or in the alternative that the judgment of the Supreme Court of Minnesota should be affirmed.

Respectfully submitted,

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APPENDIX A

Minnesota Statutes, Section 290.03, as enacted in 1933 (Minnesota Laws 1933, Chapter 405, section 3) provides:

"Rate of tax — (a) There is hereby imposed an annual tax for each taxable year upon the taxable net income for such year of every taxpayer specified in subsection (b) hereof, computed in the manner and at the rates hereinafter provided.

(b) The tax imposed by sub-section (a) shall apply in the case of a domestic and foreign corporation whose business within this state during any taxable year consists exclusively of interstate commerce; to resident and non-resident individuals; to the estates of decedents dying domiciled within or without this state; to trusts (except so far as these are taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations; provided that no non-resident individual shall be taxed on his income from compensation for labor or personal service within the state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year."

By Minnesota Laws 1937, Extra Session, Chapter 49, Section 3, the above statute was amended to read as follows:

"Rate of tax. An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(a) Domestic and foreign corporations whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both;

(b) Resident and non-resident individuals, except that no non-resident individual shall be taxed on his income

from compensation for labor or personal services within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year;

(c) Estates of decedents dying domiciled within or without this state; and

(d) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations."

In 1941 (Minnesota Laws 1941, Chapter 550, section 1) this statute was again amended to read:

"Classes of taxpayers. An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(a) Domestic and foreign corporations not taxable under Section 2 who own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both.

(b) Resident and non-resident individuals, except that no non-resident individual shall be taxed on his income from compensation for labor or personal services within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year.

(c) Estates of decedents, dying domiciled within or without this state, and,

(d) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations."

The last change was made in 1945 (Minnesota Laws 1945, Chapter 410, section 1) when this section was amended to read:

"Classes of taxpayers. An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(1) Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both;

"Business within the state shall not be deemed to include transportation in interstate or foreign commerce, or both, by means of ships navigating within or through waters which are made international for navigation purposes by any treaty or agreement to which the United States is a party;

(2) Resident and non-resident individuals, except that no non-resident individual shall be taxed on his income from compensation for labor or personal services within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year;

(3) Estates of decedents, dying domiciled within or without this state; and,

(4) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations."

APPENDIX B

Minnesota Statutes, Section 290.02, as enacted in 1933 (Minnesota Laws 1933, Chapter 405, section 3) provides:

> "Income tax imposed. There is hereby imposed on every domestic and foreign corporation an annual tax for the privilege of existing as a corporation or of transacting any local business within this state during any part of its taxable year, measured by its taxable net income for such year, computed in the manner and at the rates hereinafter provided."

In 1937 (Minnesota Laws 1937, Extra Session, Chapter 49, section 2), the above statute was amended to read:

> "Income tax imposed. — (a) An annual tax is hereby imposed upon every domestic corporation, except those included within Section 3, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within Section 3, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.
>
> (b) The tax imposed by subsection (a) shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and shall be computed in the manner and at the rates hereinafter provided."

The last change was made in 1947 (Minnesota Laws 1947, Chapter 635, section 2):

> "Imposition of privilege tax on corporations; measurement. An annual excise tax is hereby imposed upon every domestic corporation, except those included within section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every

foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

"The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter."